

### **Remarks**

Claims 40-47, 50-54, 62 and 131-134 are pending and were considered in the Office Action mailed on November 15, 2004. Claims 44 and 62 are objected to based on informalities and claims 40-47, 50-54, 62, and 131-134 are rejected under 35 U.S.C. §112, second paragraph. In addition, the Examiner stated that the oath or declaration previously submitted is defective, that the drawings or Brief Description of the Drawings must be corrected to include sequence identifiers, and that the drawings must be corrected to conform with certain formalities. Each of these are discussed below.

### **Oath or Declaration**

The declaration previously submitted in this application is considered defective because inventor David Housman did not date his signature. Under 37 CFR § 1.67(a)(2), deficiencies relating to fewer than all inventors may be corrected with a supplemental declaration signed only by the inventor to whom the deficiency relates. Therefore, in compliance with 37 CFR § 1.67(a)(2), Applicants submit herewith a supplemental Declaration and Power of Attorney identifying the entire inventive entity and signed and dated by inventor David Housman.

The previously submitted declaration is also considered defective because the claim for priority to Provisional Application 60/108,685 is missing. Under 37 CFR § 1.76(d)(2), information in an application data sheet will govern when inconsistent information is supplied at the same time by a declaration under 37 CFR § 1.67. Accordingly, to address the deficiency, Applicants submit herewith a supplemental application data sheet, in accordance with 37 CFR § 1.76(d)(2), in which a claim for priority to Provisional Application 60/108,685 is included.

Applicants believe that submission of the supplemental declaration and supplemental application data sheet serve to correct the deficiencies asserted in the Office Action, and respectfully request that the objection be withdrawn.

### **Claim Objections**

Claim 44 is objected to for reciting “Herpes simplex” rather than “Herpes simplex virus.” Applicants amend claim 44 to recite “Herpes simplex virus.” In addition, claim 62 is objected to for allegedly being unclear. Claim 62 is hereby amended for clarification purposes to recite “culturing a host cell of any one of claims...” No new matter has been introduced by these claim amendments. Applicants respectfully submit that the amendments to claims 44 and 62 obviate the claim objections, and request reconsideration and withdrawal thereof.

### **Sequence Rules and Amendments to the Specification**

The Office Action provides that a sequence identifier must be used for the sequences appearing in Figures 2 and 3 of the current application. Applicants submit a Supplemental Sequence Listing that includes all the sequences listed in Figures 2 and 3 and assigns each sequence a sequence identifier. No new matter has been introduced by the Supplemental Sequence Listing, and Applicant’s hereby request entry of the Supplemental Sequence listing. In addition, as reflected in the Amendments to the Specification Section above, Applicants amend the Brief Description of the Drawings section for clarification purposes and to include a sequence identifier for each sequence appearing in Figures 2 and 3. Pages 16 and 22 of the specification are also amended to correct typographical errors and ensure consistency with the drawings and the Supplemental Sequence Listing. No new matter has been introduced by the amendments to the specification. Applicants respectfully submit that the Supplemental Sequence Listing and the amendments to the specification correct the defects identified by the Examiner and believe the application is in compliance with the sequence rules.

### **Drawings**

In the present Office Action, the drawings filed on October 22, 1999, are objected to by the Examiner. Specifically, the Examiner states that the informal drawings filed on October 22, 1999, would be acceptable subject to correction of the informalities indicated on the “Notice of Draftperson’s Patent Drawing Review,” which provides that the numbers, letters and reference characters must be at least .32cm (1/8 inch) in height for Figures 2 and 3. Applicants provide

herewith a corrected copy of the informal drawings submitted on October 22, 1999, in which the numbers, letters and reference characters in Figures 2 and 3 are at least .32 cm in height.

Applicants believe submission of the corrected drawings obviates the objection to the drawings and request reconsideration and withdrawal thereof.

**Rejections under 35 U.S.C. § 112, second paragraph**

Claims 40-47, 50-54, 62, and 131-134 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. As suggested by the Examiner in the Office Action, claims 40 and 45 are amended to recite "comprising" instead of "including." No new matter has been introduced by these claim amendments. Applicants respectfully submit that amended independent claims 40 and 45, as well as claims 41-44, 46, 47, 50-54, 62, and 131-134 that depend there from, comply with 35 U.S.C. § 112, second paragraph. Accordingly, Applicants submit that claims 40-47, 50-54, 62, and 131-134 are in condition for allowance and request reconsideration and withdrawal of the rejections.

**Conclusion**

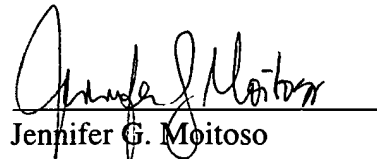
Applicants respectfully submit that the application is in condition for allowance and request early and favorable action. Prior to issuing another Office Action, Applicants' attorney respectfully requests that the Examiner call the undersigned at the telephone number below in order to expedite allowance of this application.

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Respectfully submitted,



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